IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

Crl.MC.No. 272 of 2007()

CC.2982/2001 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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PETITIONERS/ACCUSED 1 & 3:

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1. VED PAL, S/O. KISHAN RAM
   NILLOKERI, BHAIRUKHURD P.O.
   KARNAL DIST., HARIYANA.

2. SATNAM SINGH, S/O. JARNAIL SINGH
   MALAKEHRI, MANAWALA P.O.,
   PUNJAB.

BY ADV. SRI.S.MUHAMMED HANEEFF
SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENTS/COMPLAINANT:

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1. STATE OF KERALA, REP. BY SUB INSPECTOR
   OF POLICE (CRIME NO. 1 OF 2000)
   ET SOUGH POLICE STATIOIN, ERNAKULAM.

2. PAUL P. MATHEW, S/O. MATHAI
   PICHUPLIN HOUSE, KAVAKKAD DESOM
   ERANALLOR P.O., MUVATTUPUZHA.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 272 of 2007

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Dated this the 2nd day of February, 2007

O R D E R

The petitioners are accused 1 and 3 in a prosecution initiated against them, inter alia, under Sections 353 and 294(b) r/w. 34 I.P.C. The crux of the allegations against them is that they committed offences against the second respondent/defacto complainant while he was on official duty as an official of the C.I.S.F. The alleged offences had taken place as early as on 31.12.1999. The case was registered as C.C. 2982 of 2001. The petitioners have not personally appeared before the learned Magistrate so far. They have entered appearance through counsel, it is submitted. Warrants of arrest are pending against them.

2. The petitioners came to this Court with a prayer that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings against them. What is the reason? The short plea raised is that the petitioners, who are also personnel of the C.I.S.F., have settled their disputes with the second respondent, who is alleged to have settled, compromised and compounded the offences allegedly committed

against him. In these circumstances it is prayed that premature termination of the proceedings against the petitioners may be brought about. It is accepted that the offences are not compoundable. But it is contended that the dictum in **B.S. Joshi** v. **State of Haryana** (AIR 2003 SC 1386) must come to the rescue of the petitioners and save them from the continued trauma of this undeserved prosecution. The petitioners are now employed at Utheranjal and Madurai and it is practically impossible for them to appear before the Court at Ernakulam.

3. The offence under Section 353 I.P.C. is a serious offence and there can be no composition of the said offence. That offence cannot be reckoned merely as an offence against the second respondent. The second respondent may be legally entitled to compound the other compoundable offences committed personally against him. But so far as Section 353 I.P.C. is concerned, it may not be possible to read down the significance of the offence as one affecting the second respondent alone.

4. It has often been repeated that the dictum in **B.S. Joshi** does not obliterate the distinction between compoundable and non-compoundable offences. In the peculiar facts and circumstances of that case, the Supreme Court in **B.S. Joshi** held that the powers under Section 482 Cr.P.C. can

be invoked to quash the proceedings. That was a case where the spouses had settled their disputes and the continuance of the prosecution initiated under Section 498A I.P.C. was found to be unjustified and unnecessary. The dictum in **B.S. Joshi** cannot be mechanically imported to all cases, where non-compoundable offences are compounded by the alleged victim, though such course is not sanctioned by the provisions of Section 320 Cr.P.C. I am not, in these circumstances, persuaded to invoke the powers under Section 482 Cr.P.C. with the help of the dictum in **B.S. Joshi** to prematurely terminate the prosecution against the petitioners.

5. There is a statement that the Commandant of C.I.S.F. has also accepted the compromise. I should think that the course open to the petitioners is to approach the Government for withdrawal of the prosecution against them through their official superior. Needless to say, such request, if made, will have to be considered in accordance with law.

6. The learned counsel for the petitioners submits that all offences are summons offences and the petitioners may be permitted to appear through counsel. It is for the petitioners to apply before the learned Magistrate explaining the circumstances, including the fact that they are now available at Utheranjal and Madurai in connection with their official

duties. Needless to say, the learned Magistrate must consider such applications on merits and the mere fact that warrants have once been issued against the petitioners cannot be reckoned as a valid reason not to consider such applications for exemption on merits.

7. This Crl.M.C. is hence dismissed with the above observations.

(R. BASANT)
Judge

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